

**Senate File 358 - Introduced**

SENATE FILE 358  
BY COMMITTEE ON JUDICIARY

(SUCCESSOR TO SSB 1220)

**A BILL FOR**

1 An Act concerning title to real estate.

2 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 558.5, Code 2013, is amended to read as  
2 follows:

3 **558.5 Contract for deed — presumption of abandonment.**

4 1. When the record shows that a contract or bond for a deed  
5 ~~has been~~ was executed more than ten years earlier, ~~and the~~  
6 ~~record discloses no performance of the same and that more than~~  
7 ~~ten years have elapsed since the contract by its terms was to~~  
8 ~~be performed,~~ the contract or bond shall be deemed abandoned  
9 by the vendee and ~~of no effect~~ void and the land shall be freed  
10 from any lien or defect on account of the contract or bond in  
11 any of the following situations:

12 a. The record does not indicate the contract or bond has  
13 been performed and more than ten years have elapsed since the  
14 contract or bond by its terms was to be performed.

15 b. A performance date for the contract or bond is not stated  
16 in the contract or bond or any extensions thereof and more than  
17 twenty years have elapsed from the date the contract or bond  
18 was executed.

19 2. ~~On and after July 1, 1992, this~~ This section shall  
20 apply to a contract or bond described in this section, if the  
21 contract or bond is not filed of record but is referred to in  
22 another instrument which is filed of record. The contract or  
23 bond shall be deemed abandoned by the vendee ten years from the  
24 date that the contract or bond is to be performed according to  
25 the recorded instrument. However, if the recorded instrument  
26 does not refer to a performance date for the contract or bond,  
27 the contract or bond shall be deemed abandoned ~~ten~~ twenty years  
28 after the date that the instrument containing the reference is  
29 recorded.

30 3. This section shall not apply to a vendee or a vendee's  
31 successor in interest if the vendee or the vendee's successor  
32 in interest is in possession of the property or has been  
33 continuously paying the total amount due, as defined in  
34 section 445.1, of the taxes levied against the property for the  
35 preceding five years.

1     Sec. 2. Section 614.21, Code 2013, is amended to read as  
2 follows:

3     **614.21 Foreclosure of ancient mortgages.**

4     1. ~~No~~ An action ~~shall be maintained~~ to foreclose or  
5 enforce any real estate mortgage, bond for deed, trust deed,  
6 or contract for the sale or conveyance of real estate, after  
7 twenty years from the date thereof, as shown by the record of  
8 such instrument, shall be barred, unless ~~the~~ either of the  
9 following:

10     a. The record of such instrument shows that less than  
11 ten years have elapsed since the date of maturity of the  
12 indebtedness or part thereof, secured thereby, or since the  
13 right of action has accrued ~~thereon, or unless the~~.

14     b. The record shows an extension of the maturity of the  
15 instrument or of the debt or a part thereof, and that ten years  
16 from the expiration of the time of such extension have not yet  
17 expired.

18     2. The date of maturity, when different than as appears by  
19 the record of the instrument, and the date of maturity of any  
20 extension of said indebtedness or part thereof, may be shown  
21 at any time prior to the expiration of the ~~above~~ periods of  
22 limitation specified in subsection 1 by the holder of the debt  
23 or the owner or assignee of the instrument filing an extension  
24 agreement, duly acknowledged as the original instrument was  
25 required to be acknowledged, in the office of the recorder  
26 where the instrument is recorded.

27     3. ~~From and after July 4, 1946, this~~ This section shall also  
28 apply to any instrument ~~of the kind~~ described in this section  
29 which is not of record but which is described or referred to  
30 in any other instrument which is filed of record ~~and the~~.  
31 The limitation shall be ten years from the due date of the  
32 instrument referred to if disclosed in the record ~~and,~~ if not  
33 so disclosed, then within ten years from the date of the record  
34 ~~of the instrument containing such reference~~ is recorded.

35     4. a. A vendee of a real estate contract or bond for deed,

1 or a vendee's successor in interest, who is barred by this  
2 section from maintaining an action to foreclose or enforce  
3 the contract or bond and who is in physical possession of the  
4 property may serve the vendor with a demand for a deed as  
5 provided in the contract. The notice may be served personally  
6 or by publication, on the same conditions, and in the same  
7 manner as is provided for the service of original notices,  
8 except that when the notice is served by publication an  
9 affidavit shall not be required before publication. Service  
10 by publication shall be deemed complete on the day of the last  
11 publication. Service may be made on a judgment creditor of  
12 the deceased vendor or any other person who is, as a matter of  
13 record, interested in the estate of a deceased vendor, in the  
14 manner provided in section 654.4A, subsections 4 and 5.

15 b. The demand shall state that if a deed is not provided  
16 within forty-five days of service and an action to foreclose  
17 or forfeit the contract has not been commenced within such  
18 forty-five-day period, the vendee may file an affidavit showing  
19 service and compliance with this subsection whereupon the  
20 auditor shall correct the county records as provided in section  
21 558.67 to indicate that the rights of the vendor have vested  
22 in the vendee.

23 Sec. 3. Section 656.3, Code 2013, is amended to read as  
24 follows:

25 **656.3 Service.**

26 1. ~~Said~~ The notice provided for in section 656.2 may be  
27 served personally or by publication, on the same conditions,  
28 and in the same manner as is provided for the service of  
29 original notices, except that when the notice is served by  
30 publication ~~no~~ an affidavit ~~therefor~~ shall not be required  
31 before publication. Service by publication shall be deemed  
32 complete on the day of the last publication.

33 2. The notice provided for in section 656.2 may be served  
34 on a judgment creditor of a deceased vendor or on any other  
35 person who is, as a matter of record, interested in the estate

1 of a deceased vendor in the manner provided in section 654.4A,  
2 subsections 4 and 5.

3 Sec. 4. Section 656.9, Code 2013, is amended to read as  
4 follows:

5 **656.9 Defect in forfeiture proceedings — limitation of**  
6 **actions.**

7 1. An action shall not be commenced after July 1, 1992,  
8 which that asserts a claim against real estate previously  
9 subject to a forfeiture proceeding, and such claim is based  
10 upon a defect in the forfeiture proceeding, in which the proof  
11 and record of service of notice of forfeiture required by  
12 section 656.5 has been filed for record in the office of the  
13 county recorder prior to July 1, 1991.

14 2. a. An action shall not be commenced by a vendee who  
15 is not in possession of the property, or by a party to the  
16 forfeiture proceeding who is other than a vendee or vendor,  
17 that asserts a claim against real estate previously subject to  
18 a forfeiture proceeding, and such claim is based upon a defect  
19 in the forfeiture proceeding, in which the proof and record of  
20 service of notice of forfeiture required by section 656.6 has  
21 been filed of record for more than ten years.

22 b. A vendee who is not in possession of the property, or a  
23 party to the forfeiture proceeding who is other than the vendee  
24 or vendor, may commence an action described in paragraph "a" at  
25 any time prior to July 1, 2014, if, as of June 30, 2013, more  
26 than nine years but ten years or less have elapsed since the  
27 proof and record of service of notice of forfeiture required by  
28 section 656.6 was filed of record.

29 c. This subsection is repealed July 1, 2014.

30 EXPLANATION

31 This bill makes changes relating to the sale of real estate  
32 by contract or bond.

33 The bill amends Code section 558.5, relating to a  
34 presumption of abandonment of a contract or bond for the sale  
35 of real estate. Under current law, a contract or bond for the

1 sale of real estate is presumed abandoned and of no effect if  
2 the record of the contract or bond was executed or recorded,  
3 as applicable, more than 10 years earlier and no performance  
4 had been made on the contract or bond and 10 years have elapsed  
5 since the performance date stated in the record of the contract  
6 or bond. The bill provides that if the record of the contract  
7 or bond for the sale of real estate executed more than 10 years  
8 earlier does not indicate a performance date, the contract or  
9 bond is presumed abandoned and of no effect when more than 20  
10 years have elapsed since the record of the contract or bond  
11 was executed or recorded, as applicable. Code section 558.5  
12 is also amended to remove a July 1, 1992, date relating to  
13 prospective applicability of Code section 558.5 to a contract  
14 or bond for the sale of real estate that is not recorded but is  
15 referred to in another recorded instrument.

16 This bill amends Code section 614.21, relating to the  
17 foreclosure of ancient mortgages. Current law provides that an  
18 action to foreclose or enforce any real estate mortgage, bond  
19 for deed, trust deed, or contract for the sale or conveyance  
20 of real estate, after 20 years from the date thereof, as shown  
21 by the record of such instrument, shall not be barred under  
22 certain circumstances. The bill provides that a vendee of a  
23 real estate contract or bond for deed, or a vendee's successor  
24 in interest, who is barred under Code section 614.21 from  
25 maintaining an action to foreclose or enforce the contract or  
26 bond and who is in physical possession of the property may  
27 serve the vendor with a demand for a deed as provided in the  
28 contract. The written notice may be served personally or by  
29 publication, on the same conditions, and in the same manner as  
30 is provided for the service of original notices, except that  
31 when the notice is served by publication an affidavit shall  
32 not be required before publication. Service by publication  
33 shall be deemed complete on the day of the last publication.  
34 The bill also provides for service on a judgment creditor of  
35 a deceased vendor or any other person who is, as a matter of

1 record, interested in the estate of a deceased vendor. The  
2 demand shall state that if a deed is not provided within 45  
3 days of service and an action to foreclose or forfeit the  
4 contract has not been commenced within such period, the vendee  
5 may file an affidavit showing service. In such a case the  
6 county auditor is required to correct the county records to  
7 indicate that the rights of the vendor have vested in the  
8 vendee.

9 The bill amends Code section 656.3 to specify that the  
10 written notice that a vendor is required to serve on a vendee  
11 pursuant to Code section 656.2 to forfeit a contract for the  
12 sale of real estate located in this state may be served on a  
13 judgment creditor of a deceased vendor or on any other person  
14 who is, as a matter of record, interested in the estate of a  
15 deceased vendor in the manner provided for service of process  
16 in Code section 654.4A.

17 The bill provides that an action that asserts a claim against  
18 real estate previously subject to a forfeiture proceeding,  
19 based upon a defect in the forfeiture proceeding, shall not be  
20 commenced by a vendee who is not in possession of the property,  
21 or by a party to the forfeiture proceeding who is other than  
22 a vendee or vendor, in which the proof and record of service  
23 of notice of forfeiture has been filed of record for more than  
24 10 years. A vendee who is not in possession of the property,  
25 or a party to the forfeiture proceeding who is other than the  
26 vendee or vendor, may commence such an action at any time prior  
27 to July 1, 2014, if, as of June 30, 2013, more than nine years  
28 but 10 years or less have elapsed since the proof and record of  
29 service of notice of forfeiture was filed of record. The bill  
30 repeals this provision on July 1, 2014.